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ABSTRACT

The principles, values, and issues of our constitutional heritage that should be emphasized in citizenship education are based on the concepts of liberty and power. The Constitution is not a sacred icon formulated by immortals, but rather a changing and controversial framework guided by a diverse group of practical politicians, sensitive to their own condition, willing to compromise, and able to borrow from the best political thought in the western world. Most importantly, they learned that power must be limited and carefully watched if liberty is to be preserved. Three issues constitute the origins, pervasiveness, and the heart of the Constitution for citizenship education: (1) separation of powers and checks and balances, designed to prevent corruption and protect liberty by intentionally and necessarily forcing the branches of government to avoid quick and simple solutions; (2) federalism, the idea that states' rights protect against encroachment of federal authority and provide a governmental forum for local citizens; and (3) civil liberties, which most easily bring to the surface the tensions between liberty and power by raising the question of protection afforded by the Bill of Rights. (TRS)

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LIBERTY, POWER, AND THE AMERICAN CONSTITUTIONAL HERITAGE

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LIBERTY, POWER, AND THE AMERICAN CONSTITUTIONAL HERITAGE

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What principles, values, and issues of our constitutional heritage should be emphasized in the education of citizens? That is a very large question, much too challenging to address fully in one short presentation. Let me impose some boundaries, reflecting my own interests and the dictates of time and convenience. I trust that these will not limit discussion at the conclusion of my formal remarks, but rather serve to prime the pump of your intellects so that you may extend and challenge my modest contributions.

Mine is not a lawyer's analysis of the Constitution, not only because I am not trained in the law but because I think we should not allow the legal profession to exercise monopoly control of the document. This is a civic document, and I propose to address it as a citizen rather than as a lawyer. I propose to address our constitutional heritage also as a historian interested in the broad panoply of this nation's past. The document derives from a specific time and place and cannot be understood without reference to that time and place. As both historian and citizen I am especially interested in questions of liberty and of power. These two notions, liberty and power, will

constitute the boundaries of my remarks.

One of the major impediments to understanding our constitutional hertiage is the tendency to transform the document into a sacred icon, an object of veneration to be worshipped on the alter of the republic in the National Archives. Often, in this revered vision, the Founding Fathers become more than mortals, their wisdom handed down directly from God to justify the conviction that Americans are His chosen people. We will doubtless see more than a little of this chauvinistic, iconic treatment in the Bicentennial celebrations of 1987.

One essential antidote to this wrongheaded approach to the Constitution--this reverence that lacks understanding--is to study its origins. Such study leads not to a debunking of the founding generation and their achievement (as the work of Charles Beard might suggest) but to understanding them as commonsensical leaders confronting immediate and real political challenges. You are familiar with the crisis under the Articles of Confederation, a Revolutionary era government that could not meet the responsibilities of providing a true central government. It was to amend the Articles and to provide a different mixture of liberty and power that the delegates assembled in Philadelphia in 1787. They brought with them all manner of prejudices, philosophies, values, and sentiments. Some, for example, favored slavery; others opposed it. Some favored commerce; others agriculture. Some thought the executive should be elected by the people, others thought he should be chosen by the legislature. Some represented large states; others small states. The result of these and many other differences was, of course, compromise.

It is very important that students understand the many compromises made in Philadelphia, beginning with the great compromise between large and small states. Not only does study of these compromises lead to fuller understanding of the mechanics of the Constitution, but it also provides one of the best indicators that these men were not demigods but practical and sensible politicians. Nearly all of them knew how to give a little in order to achieve a greater end--a piece of wisdom sometimes too seldom evident in our political debates today.

The delegates arrived in Philadelphia carrying practical political wisdom in their intellectual baggage. They also brought with them the wisdom of the age, indeed of the ages. These pragmatic men read books--a habit that might also serve as model for a later generation. The wisdom they brought from books had its origins in Machiavelli's Italy, Rousseau's France, and Locke's England. The most fundamental values and principles of this most American of documents were in fact of foreign origin, a part of our history that spokesmen for "100 % Americanism" have never confronted.

Instead of immortal men guided by the hand of God in carving a sacred icon then, we have a diversity of practical politicians, sensitive to their own condition, willing to compromise, and able to borrow from the best political thought of the western world.

Their reading of western philosophers and politicians combined with their experiences as rebels in the British Empire and citizens under the Articles of Confederation to convince them

that two issues stood above all others. These were liberty and power. From the philosophers, especially the English writers, they learned of the blessings of liberty and shared the English obsession with protecting liberty. In one of the great ironies of history the break with the Mother Country reinforced in American minds this English obsession. Convinced after 1763 that the Empire was attempting to deprive them of their English liberties they concluded that only by resistance and eventually separation could they protect their fundamental rights. The crucible of Revolution hardened the devotion to liberty, celebrated and apotheosized ever after in July Fourth oratory.

The crucible of Revolution hardened also the American tendency to distrust authority and to fear power. Power corrupts, American colonials came to believe. Power destroys life, liberty, and the pursuit of happiness. This they saw firsthand with their colonial governors, their British Parliament, and their King. They learned that power had to be limited and carefully watched if liberty was to be preserved. The fox of power always lurked near the hen house of liberty. Thus, for example, in their first state constitutions these former colonials granted to their governors very few powers. And in their first national constitition, the Articles of Confederation, they refused to allow even for the existence of a single executive. Power was to remain with the people, delegated only sparingly to their representatives in the state legislatures and the national Congress.

But the pendulum swinging between liberty and power had swung so far from power in the mid-1780s that there was

insufficient responsiblity, vigor, and authority in national government. Events such as Shays' Rebellion and the snubs of foreign governments convinced many Americans that a stronger, more centralized national government was necessary if liberty was not to fall victim to anarchy, disorder, and irresponsibility.

They came to Philadelphia determined to balance liberty and power, to create a government that would be energetic, that would be able responsibly to provide for the general welfare and at the same time protect liberty. It was this duel mission, this concern for both liberty and power, that caused so much of the controversy and the compromise that hot summer. It is the tension betwen liberty and power, between freedom and responsibility, that continues to constitute the dominate challenge in grasping the civic meaning of our Constitution.

Three issues can help elaborate the origins of this tension and its ongoing pervasiveness in American government and public life. These three areas constitute, in my opinion, the heart of the Constitution for citizen education.

Separation of Powers and Checks and Balances

This is perhaps the most familiar part of the Constitution to Americans, yet perhaps ony superficially so. James Madison explained it simply and accuately in the Federalist Number 51: "The constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other." This meant creation of three distinct branches of government and within one, the legislature, two distinct houses, all jealousy guarding their own powers and keeping in check the powers of the

others. It is essential that while students learn the mechanics of the Constitution they learn also how this sophisticated system of checks and balances actually works. The presidential veto power, for example, can be understood only in this context. So too can the tragedy of Watergate.

There are high costs for this elaborate system of checks and balances. American government is seldom elegant or efficient. Instead, policy making is messy, frustrating, and often inconclusive. Rather than quick, simple solutions, Congress, President, and Supreme Court sputter forth with delay, vacillation, and compromise. But that is the intentional result and the necessary cost in a constitutional arrangement designed for the prevention of corruption and the protection of liberty. Those who promise quick and easy solutions are often among the most dangerous enemies of liberty. That is a hard lesson for a sixteen-year old American student to learn, but few lessons are more important.

Federalism

A special form of checks and balances is federalism. This too derived from the immediate political environment of the Founding Fathers and from their philosophical wrestling with the tension between liberty and power. Many of the Revolutionary generation saw the states as the bulwarks of liberty. But states could not conduct foreign affairs, create a national economy, or perhaps even protect their citizens from anarchy. The document created in Philadelphia is filled with compromises between state and national governments, granting some powers to one or the

other and allowing for shadowy areas in which lines of responsibility are mixed and unclear. Much of American political history, including the Civil War, the New Deal, and the Great Society, involves defining relations between state and federal governments. This evolving system of federalism is one of America's major political innovations.

There are important instances in which the states have protected liberty against the power of the federal government, as in the Alien and Sedition Acts of the 1790s or the regulation of business in the Progressive era. And the federal government, in turn, has protected liberty in the states in such matters as slavery in the 1860s and civil rights in the 1960s.

Tensions between the state capitals and Washington continues, even to the point that some impatient efficiency experts have advocated elimination of state governments. That would be a disastrous mistake, of course. States protect against encroachment of federal authority and provide a governmental forum for local citizen will. They allow for diversity and help enable a pluralistic people to remain different as they hang together under one flag. That Indiana is like neither California nor Kentucky is part of the richness of the nation, to be encouraged.

Civil Liberties

The tensions between liberty and power have been brought most easily to the surface in the matter of civil liberties. A widely recognized need for a responsible government that could act with vigor in crisis did not lead to an omnipotent government

unmindful of the rights of citizens, as was the case in Germany in the 1930s, for example. On the contrary, the constitutional framers took pains to ensure the protection of individual liberty. Responding to fears of corrupting power, as expressed by Antifederalist opponents of the Constitution, Madison and his associates delivered on their promise to guarantee explicitly fundamental rights they thought implicit in the new order of government. The result was the Bill of Rights.

Each of the first ten amendments to the Constitution, approved in late 1791, is important, but the initial amendment comes first in enduring significance and in ongoing controversy. It reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Each of these first amendment rights has a long genealogy in Anglo-American history. Each remains more current than Michael Jackson or John Cougar Mellencamp. Part of the challenge in understanding this first amendment is caused by its widely cast net of liberty, its large promise of protection against any corrupting power, combined with a vagueness and uncertainity about specific and exact applications. It can be agreed, perhaps, that freedom of speech does not extend to shouting fire in a crowded theater, but does it protect also the right of the Ku Klux Klan to parade through your hometown? The first amendment usually protects the somber New York Times but does it protect pornographic magazines or scurrilous stories about

teachers in a high school newspaper? It protects high-minded criticism of the federal government, but does it protect Indiana University students who assemble to heckle William Rhenquist and by that impolite behavior "petition the Government for a redress of grievances?" The first amendment has blocked any single religious group from attaining a dominant place in public life, but should it protect also electronic evangelists who raise millions of dollars through questionable means for questionable purposes.

The necessity of raising such questions with students is not to prepare them for immediate and simple yes or no answers. On the contrary, consideration of any such issues should serve above all to help students reject simple answers and arrive thoughtfully at a position that recognizes the merits of opposing views. Discussion of first amendment freedoms, along with much of the rest of the Constitution, should also provide opportunities to understand how interpretations have changed, as in the expansion of freedom of speech in twentieth-century America.

The Constitution of 1787 is a changing framework of government and a controversial one. That is why we so often refer to it as a living Constitution. Neither learned discussion nor heated debate over such issues as prayer in schools, gun control, pornography, the fifty-five mile speed limit, searches of student lockers, or abortion will likely produce a consensus in any classroom or community. That troubles some small minds and insecure hearts who want all Americans to stand up together

for their country. The real American values are not to be displayed in one's position on such issues, however, but rather in an attachment to a government and a Constitution that allows for a diversity of views while affirming a commitment to liberty. It is this broad and enduring commmitment to liberty, even in the most powerful nation on earth, that we should celebrate in 1987. And it is the deeper understanding of the historical origins and contemporary meanings of liberty that we should seek to spread among students and citizens in the years to come. It was Justice Louis Brandeis who wrote: "Those who won our independence believed . . . the greatest menace to freedom is an inert people, that public discussion is a political duty, and that this should be a fundamental principle of the American government." I would add only that it should be a fundamental principle of our American schools also.